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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA

United States of America,
 Plaintiff,
 vs.
 Israel Martinez,
 Defendant.

CR- 15-00697-PHX-DJH

PLEA AGREEMENT

Plaintiff, United States of America, and the defendant, ISRAEL MARTINEZ, hereby agree to dispose of this matter on the following terms and conditions:

1. PLEA

The defendant will plead guilty to Count Two of the indictment charging the defendant with a violation of 21 United States Code (U.S.C.) §§ 952(a), 960(a)(1), and 960(b)(3), Importation of a Controlled Substance, a Class C felony offense.

2. MAXIMUM PENALTIES

a. A violation of 21 U.S.C. §§ 952(a), 960(a)(1), and 960(b)(3), is punishable by a maximum fine of \$1,000,000, a maximum term of imprisonment of twenty (20) years, or both, and a term of supervised release of no less than three (3) years.

b. According to the Sentencing Guidelines issued pursuant to the Sentencing Reform Act of 1984, the Court shall order the defendant to:

1 (1) make restitution to any victim of the offense pursuant to 18 U.S.C.
2 § 3663 and/or 3663A, unless the Court determines that restitution would not be
3 appropriate;

4 (2) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a
5 fine is not appropriate;

6 (3) serve a term of supervised release when required by statute or when
7 a sentence of imprisonment of more than one year is imposed (with the understanding
8 that the Court may impose a term of supervised release in all other cases)

9 (4) pay upon conviction a \$100 special assessment for each count to
10 which the defendant pleads guilty pursuant to 18 U.S.C. § 3013; and

11 (5) forfeit certain food stamp, social security, and other federal benefits,
12 all pursuant to 21 U.S.C. §§ 862 and 862a, if the court determines that such ineligibility is
13 appropriate in this case.

14 c. The Court is required to consider the Sentencing Guidelines in determining
15 the defendant's sentence. However, the Sentencing Guidelines are advisory, and the
16 Court is free to exercise its discretion to impose any reasonable sentence up to the
17 maximum set by statute for the crime(s) of conviction, unless there are stipulations to the
18 contrary that the Court accepts.

19 **3. AGREEMENTS REGARDING SENTENCING**

20 a. Stipulation. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and
21 the defendant stipulate that if sentenced to prison, the term of imprisonment shall be no
22 greater than the low end of the final advisory Sentencing Guideline Range, as determined
23 by the Court at sentencing.

24 b. Stipulation. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C),
25 the parties stipulate and agree that if the defendant qualifies for the "safety valve"
26 reduction pursuant to 18U.S.C. §3553(f) and United States Sentencing Guideline Manual
27 §5C1.2, then the defendant shall receive the applicable reduction in the guideline offense
28 level. If the defendant is not eligible for this consideration, then the parties agree that this

1 particular provision will be void and all other provisions of this plea agreement shall
2 remain in full force and effect.

3 c. Acceptance of Responsibility. If the defendant makes full and complete
4 disclosure to the U.S. Probation Office of the circumstances surrounding the defendant's
5 commission of the offense, and if the defendant demonstrates an acceptance of
6 responsibility for this offense up to and including the time of sentencing, the United
7 States will recommend a two-level reduction in the applicable Sentencing Guidelines
8 offense level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has an offense level of 16
9 or more, the United States will recommend an additional one-level reduction in the
10 applicable Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(b).

11 d. Recommendation: Minor Role. Pursuant to Federal Rule of Criminal
12 Procedure 11(c)(1)(B), the United States agrees to recommend that the defendant receive
13 a two-level downward adjustment under United States Sentencing Guideline Manual
14 Section 3B1.2(b).

15 e. Non-Binding Recommendations: The defendant acknowledges that
16 recommendations are not binding on the Court. The defendant further acknowledges that
17 he/she will not be permitted to withdraw his/her guilty plea if the Court does not follow a
18 recommendation.

19 **4. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

20 a. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States, at the time of
21 sentencing, shall dismiss the following charges: Count One of the Indictment.

22 b. This agreement does not, in any manner, restrict the actions of the United
23 States in any other district or bind any other United States Attorney's Office.

24 **5. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

25 a. If the Court, after reviewing this plea agreement, concludes that any
26 provision contained herein is inappropriate, it may reject the plea agreement and give the
27 defendant the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P.
28 11(c)(5).

1 b. If the defendant's guilty plea or plea agreement is rejected, withdrawn,
2 vacated, or reversed at any time, this agreement shall be null and void, the United States
3 shall be free to prosecute the defendant for all crimes of which it then has knowledge and
4 any charges that have been dismissed because of this plea agreement shall automatically
5 be reinstated. In such event, the defendant waives any and all objections, motions, and
6 defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional
7 restrictions in bringing later charges or proceedings. The defendant understands that any
8 statements made at the time of the defendant's change of plea or sentencing may be used
9 against the defendant in any subsequent hearing, trial, or proceeding subject to the
10 limitations of Fed. R. Evid. 410.

11 **6. WAIVER OF DEFENSES AND APPEAL RIGHTS**

12 The defendant waives (1) any and all motions, defenses, probable cause
13 determinations, and objections that the defendant could assert to the indictment or
14 information; and (2) any right to file an appeal, any collateral attack, and any other writ
15 or motion that challenges the conviction, an order of restitution or forfeiture, the entry of
16 judgment against the defendant, or any aspect of the defendant's sentence, including the
17 manner in which the sentence is determined, including but not limited to any appeals
18 under 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and
19 2255 (habeas petitions), and any right to file a motion for modification of sentence,
20 including under 18 U.S.C. § 3582(c). This waiver shall result in the dismissal of any
21 appeal, collateral attack, or other motion the defendant might file challenging the
22 conviction, order of restitution or forfeiture, or sentence in this case. This waiver shall
23 not be construed to bar an otherwise-preserved claim of ineffective assistance of counsel
24 or of "prosecutorial misconduct" (as that term is defined by Section II.B of Ariz. Ethics
25 Op. 15-01 (2015)).
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1 **7. DISCLOSURE OF INFORMATION**

2 a. The United States retains the unrestricted right to provide information and
3 make any and all statements it deems appropriate to the U.S. Probation Office and to the
4 Court in connection with the case.

5 b. Any information, statements, documents, and evidence that the defendant
6 provides to the United States pursuant to this agreement may be used against the
7 defendant at any time.

8 c. The defendant shall cooperate fully with the U.S. Probation Office. Such
9 cooperation shall include providing complete and truthful responses to questions posed
10 by the U.S. Probation Office including, but not limited to, questions relating to:

- 11 (1) criminal convictions, history of drug abuse, and mental illness; and
12 (2) financial information, including present financial assets or liabilities
13 that relate to the ability of the defendant to pay a fine or restitution.

14 **8. ELEMENTS**

15 **Importation of a Controlled Substance--Methamphetamine**

16 On or about June 1, 2015, in the District of Arizona:

- 17 1. The defendant brought a controlled substance, into the United States from
18 the Republic of Mexico;
19 2. The defendant knew the substance he was bringing into the United States
20 was a controlled substance (Methamphetamine) or some other prohibited drug;
21 and
22 3. Methamphetamine, its salts, isomers, and salts of isomers is a Schedule II
23 Controlled substance.

24
25 **9. FACTUAL BASIS**

26 a. The defendant admits that the following facts are true and that if this matter
27 were to proceed to trial the United States could prove the following facts beyond a
28 reasonable doubt:

1 On or about June 1, 2015, I, ISRAEL MARTINEZ, drove a 1998 Honda Accord
2 with Arizona license plate BLL1557 from the Republic of Mexico to the San Luis
3 Port of Entry in the District of Arizona. United States Customs and Border
4 Protection agents found thirty-three packages taped and concealed within the
5 bumper of my car. The packages contained 16.1 kilograms of methamphetamine,
6 its salts, isomers, and salts of isomers in a usable quantity and condition. I knew
7 that these packages were concealed within my car and that they contained a
8 controlled substance. I was to be paid by another individual for driving the
9 controlled substance from the Republic of Mexico into the United States.

10 b. The defendant shall swear under oath to the accuracy of this statement and,
11 if the defendant should be called upon to testify about this matter in the future, any
12 intentional material inconsistencies in the defendant's testimony may subject the
13 defendant to additional penalties for perjury or false swearing, which may be enforced by
14 the United States under this agreement.

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16 **APPROVAL AND ACCEPTANCE OF THE DEFENDANT**

17 I have read the entire plea agreement with the assistance of my attorney. I
18 understand each of its provisions and I voluntarily agree to it.

19 I have discussed the case and my constitutional and other rights with my attorney.
20 I understand that by entering my plea of guilty I shall waive my rights to plead not guilty,
21 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to
22 present evidence in my defense, to remain silent and refuse to be a witness against myself
23 by asserting my privilege against self-incrimination, all with the assistance of counsel,
24 and to be presumed innocent until proven guilty beyond a reasonable doubt.

25 I agree to enter my guilty plea as indicated above on the terms and conditions set
26 forth in this agreement.

27 I have been advised by my attorney of the nature of the charges to which I am
28 entering my guilty plea. I have further been advised by my attorney of the nature and

1 range of the possible sentence and that my ultimate sentence shall be determined by the
2 Court after consideration of the advisory Sentencing Guidelines.

3 My guilty plea is not the result of force, threats, assurances, or promises, other
4 than the promises contained in this agreement. I voluntarily agree to the provisions of
5 this agreement and I agree to be bound according to its provisions.

6 I understand that if I am granted probation or placed on supervised release by the
7 Court, the terms and conditions of such probation/supervised release are subject to
8 modification at any time. I further understand that if I violate any of the conditions of my
9 probation/supervised release, my probation/supervised release may be revoked and upon
10 such revocation, notwithstanding any other provision of this agreement, I may be
11 required to serve a term of imprisonment or my sentence otherwise may be altered.

12 This written plea agreement, and any written addenda filed as attachments to this
13 plea agreement, contain all the terms and conditions of the plea. Any additional
14 agreements, if any such agreements exist, shall be recorded in a separate document and
15 may be filed with the Court under seal; accordingly, additional agreements, if any, may
16 not be in the public record.

17 I further agree that promises, including any predictions as to the Sentencing
18 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone
19 (including my attorney) that are not contained within this written plea agreement, are null
20 and void and have no force and effect.

21 I am satisfied that my defense attorney has represented me in a competent manner.

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1 I fully understand the terms and conditions of this plea agreement. I am not now
 2 using or under the influence of any drug, medication, liquor, or other intoxicant or
 3 depressant that would impair my ability to fully understand the terms and conditions of
 4 this plea agreement.

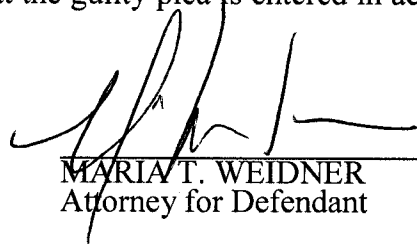
5
 6 11.16.2015
 Date


 ISRAEL MARTINEZ
 Defendant

8 **APPROVAL OF DEFENSE COUNSEL**

9 I have discussed this case and the plea agreement with my client in detail and have
 10 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the
 11 constitutional and other rights of an accused, the factual basis for and the nature of the
 12 offense to which the guilty plea will be entered, possible defenses, and the consequences
 13 of the guilty plea including the maximum statutory sentence possible. I have further
 14 discussed the concept of the advisory Sentencing Guidelines with the defendant. No
 15 assurances, promises, or representations have been given to me or to the defendant by the
 16 United States or any of its representatives that are not contained in this written
 17 agreement. I concur in the entry of the plea as indicated above and that the terms and
 18 conditions set forth in this agreement are in the best interests of my client. I agree to
 19 make a bona fide effort to ensure that the guilty plea is entered in accordance with all the
 20 requirements of Fed. R. Crim. P. 11.

21
 22 11.16.15
 Date


 MARIA T. WEIDNER
 Attorney for Defendant

APPROVAL OF THE UNITED STATES

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth herein are appropriate and are in the best interests of justice.

JOHN S. LEONARDO
United States Attorney
District of Arizona

11/16/15
Date

Kathy J. Lemke
KATHY J. LEMKE
Assistant U.S. Attorney

ACCEPTANCE BY THE COURT

Date

HONORABLE DIANE J. HUMETEWA
United States District Judge